**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 1540 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.P.DHOLAKIA**
**HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DIPAKKUMAR PRATAPBHAI BAMANIYA - Appellant(s)**
**Versus**
**STATE OF GUJARAT - Opponent(s)**

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**Appearance :**
MS NITA C BANKER for Appellant(s) : 1,
Mr.R.C.Kodekar, A.P.P. for Opponent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**

**and**

**HONOURABLE MR.JUSTICE MD SHAH**

**Date : 27/02/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE MD SHAH)**

1. Instant appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) is directed against the judgment and order of conviction and sentence dated 21-4-2005 passed by the learned Sessions Judge, Panchmahals, Godhra, in Sessions Case no.285 of 2004 by which the appellant is convicted, and for the offence punishable under Section 302 of the Indian Penal Code sentenced to suffer imprisonment for life and fine of Rs.5000/-, in default, one year's S.I.; for the offence punishable under Section 201, IPC sentenced to suffer reigorous imprisonment for one year and fine of Rs.1000/-,in default, 3 months S.I., and for the offence punishable under Section 436, IPC sentenced to suffer rigorous imprisonment for four years and fine of Rs.5000/-, in default, six months S.I. All these sentences were ordered to run concurrently. Set off for the period the convict had remained in jail is also ordered.

2. The brief facts emerging from the record of the case are as under:

The incident in question had taken place on 9th July, 2004 at 1.30 a.m.. It is alleged that the appellant doubted about the chastity of deceased Meenaben and with an intention to kill her caused injuries on her head with the aid of an iron rod and in order to conceal the evidence of murder, the appellant-accused poured kerosene on the dead body of deceased Meena and set her dead

body on fire as a result of which the house of Motibhai Raijibhai Bamania and the goods etc. which were lying in his house got burnt and damaged. As per the case of the complainant, in this manner, the appellant accused has committed offences punishable under Sections 302, 201 and 436, IPC.

3. In connection with the above referred to incident, the complainant-Jalubhai Nanabhai had lodged complaint before PSO Othambha Police Station on 9th July, 2004 and on the basis of the said complaint offence was registered vide Othambha Police Station I CR. no.54 of 2004. Thereafter, the complaint was investigated and after completing the necessary formalities, on completion of the investigation chargesheet was filed in the Court of the learned J.M.F.C., Lunavada where it was numbered as Criminal Case no.1310 of 2004 for the offence punishable under Sections 302, 201 and 436, IPC. As the offence punishable under Sections 302 and 436 was exclusively triable by a Court of Sessions, the case was committed to the Court of Sessions at Godhra, District Panchmahals, for trial where it was numbered as Sessions Case no.285 of 2004.

4. The learned Sessions Judge framed charge against appellant-accused at Exh.5. It was read over and explained to him. He pleaded not guilty to the same and claimed to be tried. To prove its case against the appellant, the prosecution examined,(1) Dr. Jayantilal Kodarbhai Patel as PW.1 at Exh.10, (2) Dr. Nityanand

Yamunaprasad Sharma as PW 2 at Exh.13, (3) Panchwitness Ramsinghbhai Shanabhai as PW 3 at Exh16, (4) Panchwitness Balabhai Malabhai Bamaniya as PW 4 at Exh.19, (5) Panchwitness Mithabhai Lalabhai Chamar as PW 5 at Exh.20, (6) Panchwitness Savabhai Ratnabhai Vankar as PW 6 at Exh.23, (7) Complainant Jalubhai Nanabhai as PW 7 at Exh.27, (8) Panchwitness Kantilal Lalabhai as PW 8 at Exh.29, (9) Maniben Jayantilal-mother of decesed as PW 9 Exh.30, (10) Kantibhai Punabhai Patelia as PW 10 at Exh.31, (11) Kanabhai Bhemabhai as PW 11 at Exh.32, (12) Pratapbhai Raijibhai Bamaniya as PW 12 at Exh.33, (13) Laxmanbhai Raijibhai as PW 13 at Exh. 34, (14) Chandubhai Nagjibhai Pargi (Scientific Officer) as PW 14 at Exh.42, (15) Punjabhai Vechatbhai Damor as PW 15 at Exh.44, (16) Kanubhai Chunilal Bhabor as PW 16 at Exh.45 and (17) Manmohanbhai Chaturbhai Megha as PW 17 at Exh.47. The prosecution also produced documentary evidence, such as, complaint at Exh.28, Panchnama of scene of offence at Exh.17, inquest Panchnama of the dead body of the deceased at Exh.18, discovery Panchnama at Exh.21, the arrest Panchnama of the accused at Exh.22, report submitted by the FSL Officer after visiting the scene of offence at Exh.43, the injury certificate of the accused at Exh.15, the Postmortem note of deceased Meenaben at Exh.11, the forwarding letter addressed to FSL at Exh.41, the FSL report at Exh.49, report of Serologist Exh.50, and map of scene of offence at Exh.54.

5. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313, Cr.P.C. The case of the appellant in his further statement was that he was innocent and a false case is filed against him. No defence evidence was adduced by him.

6. After hearing the arguments of the learned A.P.P. As well as the learned Advocate for the defence, the learned Sessions Judge noticed that the circumstances from which conclusion of guilt of the appellant was to be drawn were satisfactorily established and after taking a cumultative effect of the circumstances established by the prosecution , the learned Sessions Judge held that it was satisfactorily proved by the prosecution that in all human probability, the act of the murder of the deceased was done by the appellant and none else, and therefore, passed the impugned judgment and order of conviction and sentence as stated in para-1 of this judgment, giving rise to the present appeal.

7. Ms. Nita Banker learned Counsel for the appellant argued that the entire prosoecution case rests on the circumstantial evidence and in this case the circumstances from which the conclusion of guilt of the appellant is drawn are not fully established there is a missing link in the chain of circumstances,

and therefore, the learned Sessions Judge having erred in convicting the appellant accused, the impugned judgment should be set aside. It was also argued by her that the prosecution has failed to prove that the head injury sustained by the deceased Meenaben which resulted in her death had been caused by the appellant-accused alone. According to her the nexus between the injury and the cause of death has also not been proved by the prosecution, and therefore, also the impugned judgment should be reversed. It was claimed that the learned Judge of the trial Court has failed to appreciate the evidence on record in its proper perspective, and therefore, the appeal should be allowed.

8. Mr. R.C.Kodekar, learned A.P.P. for the State submitted that the judgment and order of conviction and sentence passed by the learned Sessions Judge is legal and proper which does not call for any interference. It was argued by the learned A.P.P. that from the evidence on record the circumstances proved by the prosecution establish that in all human probability, the act of murder of the deceased was done by the appellant and none else, and therefore, the impugned judgment should be upheld. The learned A.P.P. pointed out to the Court that cogent and convincing reasons have been recorded by the learned trial Judge for convicting the appellant and as the learned Counsel of the appellant has failed to dislodge them, the appeal which lacks merits should be dismissed.

9. This Court has heard Ms. Nita Banker, learned Counsel for the appellant as well as Mr. R.C.Kodekar for the State at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as entire evidence on record with reference to broad and reasonable probabilities of the case.

10. The fact that the deceased Meenaben died a homicidal death is not disputed before this Court by the learned Counsel for the appellant. The injuries sustained by the deceased are enumerated in the Postmortem report which is produced by the prosecution at Exh.11. Wintess Jalubhai Nanabhai PW 7and witness Maniben, PW 9 mother of the deceased have stated that on receiving message they had gone to the scene of office i.e. the house of the appellant-accused and Meenaben and found the dead body of Meenaben lying there which bore injury on the head, face right eye and other burn injuries.. PW7, father of the deceased has specifically stated in his evidence that his daughter Meena used to visit his house often and in her conversations, she told that her husband always used to beat her and abuse her by using fllthy language. The testimony of PW 1 Dr.Jayantilal Kodarbhai recorded at Exh.10 makes it clear that he had conducted the postmortem examination on the deady body of the deceased Meenaben on 9-7-2004 between 17.15 hrs and 19.30 hrs in presence of another panel Dr,Meena. The Doctor in his substantive evidence before the Court

has enumerated six injuries sustained by the deceased. According to the Doctor injury no.1 is ante mortem while injuries nos2, 3, 4, 5 and 6 are postmortem. One of the injuries noticed by him is injury no.1 CLW over rt. side of face extending from right maxillary to rt. Temporal bone through right orbit of size 10 cm. x 4 cm. upto brain. Brain matter seen. According to the Medical Officer cause of death of the deceased was due to head inury i.e. the said injury no.1. The Medical Officer is completely corroborated by the post mortem note Exh.11. Under the circumstances, the finding recorded by the learned trial Judge that it is proved by the prosecution beyond reasonable doubt that the deceased Meena died a homicidal death is found to be eminently just and is hereby upheld.

11. It is pertinent to note that there is no direct evidence regarding the incident tendered before the Court. The prosecution has also not claimed that the incident in question was witnessed by any one. Admittedly, the whole case against the appellant rests on circumstantial evidence. The Honourabale Supreme Court has, after referring to earlier case-laws, laid down six conditions to be fulfilled in a case based on circumstantial evidence. (**See: Sharad v. State of Maharashtra, AIR 1984 SC 1622.)**.

12. Bearing in mind the above referred to principles, this Court proposes to consider the question whether the charge against the

appellant-accused is proved. In the instant case, the motive stands satisfactorily establisehd from the evidence of PW 7 Jalubhai Nanabhai, the father of deceased Meenaben when he states that whenever his daughter used to visit his house, she used to tell him that the accused was abusing her using filthy words and beating her for no reason. The next circumstance sought to be proved by the prosecution is that the appellant-accused was in close proximity of the deceased Meena at the time of the incident and that the deceased was seen alive in the company of the appellant-accused. It is true that PW 9 Maniben Jayantilal, the mother of the deceased(Exh.30), PW 11 Kanabhai Bhemabhai uncle of the accused (Exh.32) and PW 12 Pratapbhai Raijibhai Bamaniya, the father of the accused (Exh.33) had turned hostile, but from their testimony before the Court, it is evident that the marrage between the appellant-accused and the deceased Meenaben had taken place a year prior to the date of the incident in question and that at the time of the incident the accused Deepak and his wife deceased Meenaben were sleeping together in her matrimonial home; that the father and mother of the accused were sleeping outside the house on the day and time of the incident. It is also borne out from the evidence of the father of the accused that deceased Meenaben and the accused Deepak were sleeping inside the room of their house on the day and time of the incident and that the room was bolted from inside. PW 13 Laxmanbhai Raijibhai, who is also uncle of the accused Deepak stated on oath before the Court that on

hearing shouts on the day of incident at 1.30 a.m., he rushed to the spot i.e. house of Deepak and found Deepak's house on fire. In the morning he came to know that deceased Meena wife of Deepak had died and Deepak also received burn injuries which would also go to show that the accused Deepak was present at his house on the day and time of the incident. It can,therefore, be safely inferred that the deceased was in close proximity of the accused on the date and time of the incident and that the deceased was last seen together with the accused in the room of their house by the father and mother of of the accused. Even the superficial burn injury found of the body of the accused Deepak shows that he was very much present in the room of his house where the deceased Meena and accused were sleeping together and that he was watching deceased Meena sustaining burns. There is no good reason to disbelieve the testimony of these witnesses merely on the ground that they are related or interested witnesses. Therefore, the most incriminating circumstance which is sought to be proved by the proseuction that the accused was in close proxmity of the deceased Meenaben at the time of the incident and that the deceased was last seen together in the company of the accused stands satisfactorily established.

13. PW 8 Kantaben Lalabhai in her testimony before the Court (Exh.29) in whose presence the inquest Panchnama was drawn has stated that the dead body of the deceased Meenaben was lying in the house of the accused. According to her there was bloodstain on

the wall of the kitchen and that the deceased had received serious injuries on the left side of her head and the right side of her eyes. The contents of the inquest Panchnama (Exh.18) is completely corroborated by the statement of this witness and it is duly proved. Apart from this, as already discussed above, PW 1 Dr. Jayantilal Kodarbhai Exh.10 who had conducted the postmortem examination of the dead body of the deceased in his substantive evidence before the Court has opined that the deceased died on account of the head injury i.e. injury no.1 as per column no.17 of the postmortem note and that this injury was ante mortem while the burn injuries were postmortem. According to the Doctor, the injury no.1sustained by the deceased Meena was sufficient in the ordinary course of nature to cause death. It is significant to note here that under the discovery Panchnama (Exh.21), the Muddammal iron bar was discovered at the instance of the accused and naturally there were no bloodstains on this weapon as the same had been destroyed by fire. Dr. Jayantilal in his evidence has stated that injury no.1 is possible by Muddammal article no.1 iron bar. There is also the evidence of PW 14 Chandubhai Nagjibhai Parghi, Scientific Officer (Exh.42) who had collected the bloodstains found from the wall of the kitchen of the house of the accused etc.. According to his observation the burn injuries found on the dead body of the deceased which he found there were postmortem. The FSL report (Exh.50) and the report of Serologist (Exh.49) show that the bloodstain collected from the wall of the kitchen of the house of the

accused and the bloodstain collected from the house of the accused was of blood group " B positive_" which tallies with the blood group of the deceased Meenaben which was also found to be of "B positive". There is no reason to disbelieve the evidence of these two witnesses who are independent witnesses. No doubt, it has come on record that the accused had also received injuries, but they are all superficial skin burns and abrasions which are simple in nature as per the certificate dated11-7-2004 issued by Dr. Nityanand Sharma, Medical Officer, R.H. & Community Health Centre, Kothamba. It is surprising that though the whole house and the goods lying there had got burnt, the accused had sustained only such simple injuries. This would also go a long way to show that the accused was all the time watching the deceased Meena burning and waited till the whole body got burnt. This fact also clearly establishes that the appellant-accused was in close proximity of the deceased Meena when she was fatally wounded.

14. Having critically analysed the evidence, this Court finds that it is established that in all probability the accused had committed the murder of the deceased Meenaben by causing iron bar injuries on her head and right side of the eye and thereafter, with an ulterior motive in order to conceal the truth set her dead body on fire so as to destroy the evidence.

15. The cumulative effect of above-mentioned circumstances

makes it evident that the chain of circumstances is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant-accused. The circumstances established show that in all human probability, the act of murder of the deceased Meena must have been done by the appellant and the appellant alone.

16. On consideration of the cumulative effect of all the proved facts, this Court is satisfied that the conviction of the appellant under Section 302, 201 and 436 of the Indian Penal Code as recorded by the learned Judge of the trial Court who had the advantage of observing the demeaner of the witnesses cannot be regarded as erroneous so as to warrant interference of this Court in the appeal under challenge.

17. This Court further notices that the Supreme Court in the case of **Vasa Chandra Shekar Rao v. Poona Satya Narayana (2000) 6 SCC 286** while explaining the law relating to circumstantial evidence, has ruled that where circumstances proved are put to the accused through his examination under Section 313 of the Code of Criminal Procedure and the accused merely denies the same, then such denial would be an additional link in the chain of circumstances to bring home the charge against the accused. Applying the principles laid down by the Supreme Court in the above quoted decision to the facts of this case, this

Court finds that the incriminating circumstances proved were put to the appellant-accused through his examination under Section 313 of the Code and in his further statement recorded under Section 313 Cr.P.C., he has merely denied the same. Therefore, such denial will have to be treated as an additional link in the chain of circumstances to bring home the charge against the appellant-accused.

18. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant-accused had caused death of his wife Meenaben on 9th July, 2004 by inflicting iron bar blow on her head and right eye, and thereafter set her on fire. Therefore, the appeal which lacks merits is liable to be dismissed.

19. For the foregoing reasons, the appeal fails and is hereby dismissed. Muddammal be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

(R.P.Dholakhia,J.)

(M.D.Shah,J.)

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